

MONTANA LEGISLATIVE HISTORY

Chapter 557 ~~18~~ 2005

Bill H 367 S _____

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) 2/04 _____ c

✓ 2/04 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 3/08 _____ c

✓ 3/14 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

Bill Draft Number: LC0639**Bill Type - Number:** HB 367**Short Title:** Revise laws to reflect Justice Courts as a court of record**Primary Sponsor:** John Parker (D) HD 23**Chapter Number:** 557**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 73

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/02/2005			
(H) Signed by Governor	05/02/2005			
(H) Transmitted to Governor	04/22/2005			
(S) Signed by President	04/22/2005			
(H) Signed by Speaker	04/21/2005			
(H) Returned from Enrolling	04/20/2005			
(C) Printed - New Version Available	04/19/2005			
(H) Sent to Enrolling	04/18/2005			
(S) 3rd Reading Conference Committee Report Adopted	04/16/2005	44	6	
(H) 3rd Reading Conference Committee Report Adopted	04/16/2005	94	6	
(H) On Motion Rules Suspended	04/16/2005			
(H) 2nd Reading Conference Committee Report Adopted	04/16/2005	98	1	
(S) Scheduled for 3rd Reading	04/16/2005			
(H) Scheduled for 2nd Reading	04/16/2005			
(S) 2nd Reading Conference Committee Report Adopted on Voice Vote	04/15/2005	50	0	
(S) Scheduled for 2nd Reading	04/15/2005			
(S) Conference Committee Report Received	04/14/2005			(S) Conference
(H) Conference Committee Report Received	04/14/2005			(H) Conference
(S) Hearing	04/13/2005			(S) Conference
(S) Conference Committee Appointed	04/09/2005			(S) Conference
(H) Conference Committee Appointed	04/06/2005			(H) Conference
(H) 2nd Reading Senate Amendments Not Concurred	04/06/2005	97	2	
(H) Scheduled for 2nd Reading	04/06/2005			
(S) Returned to House with Amendments	03/19/2005			
(S) 3rd Reading Concurred	03/19/2005	42	6	

(S) Scheduled for 3rd Reading	03/19/2005		
(C) Printed - New Version Available	03/18/2005		
(S) 2nd Reading Concurred as Amended on Voice Vote	03/18/2005	48	2
(S) 2nd Reading Motion to Amend Carried on Voice Vote	03/18/2005	49	1
(S) 2nd Reading Motion to Amend Carried on Voice Vote	03/18/2005	49	1
(S) Scheduled for 2nd Reading	03/18/2005		
(S) Taken from 3rd Reading; Placed on 2nd Reading	03/17/2005	49	1
(H) Returned to Senate	03/17/2005		
(H) Motion Carried	03/17/2005	83	14
(S) Reconsidered Previous Action; Remains in 3rd Reading Process	03/17/2005	50	0
(S) Returned to House	03/16/2005		
(S) 3rd Reading Failed	03/16/2005	25	25
(S) Scheduled for 3rd Reading	03/16/2005		
(S) 2nd Reading Concurred	03/15/2005	26	23
(S) 2nd Reading Motion to Amend Failed	03/15/2005	24	25
(S) 2nd Reading Motion to Amend Failed	03/15/2005	24	25
(S) Scheduled for 2nd Reading	03/15/2005		
(S) Committee Report--Bill Concurred	03/14/2005		(S) Judiciary
(S) Committee Executive Action--Bill Concurred	03/14/2005	7	5 (S) Judiciary
(S) Hearing	03/08/2005		(S) Judiciary
(S) Referred to Committee	02/22/2005		(S) Judiciary
(S) First Reading	02/22/2005		
(H) Transmitted to Senate	02/10/2005		
(H) 3rd Reading Passed	02/10/2005	78	20
(H) Scheduled for 3rd Reading	02/10/2005		
(H) 2nd Reading Passed	02/09/2005	80	20
(H) Scheduled for 2nd Reading	02/09/2005		
(H) Committee Report--Bill Passed	02/05/2005		(H) Judiciary
(H) Committee Executive Action--Bill Passed	02/04/2005	18	0 (H) Judiciary
(H) Hearing	02/04/2005		(H) Judiciary
(H) Hearing Canceled	01/27/2005		(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/20/2005		
(H) Referred to Committee	01/20/2005		(H) Judiciary
(H) First Reading	01/20/2005		
(H) Introduced	01/20/2005		
(C) Draft Delivered to Requester	01/19/2005		
(C) Draft Ready for Delivery	01/18/2005		
(C) Draft in Assembly/Executive Director Review	01/17/2005		
(C) Draft in Final Drafter Review	01/17/2005		

(C) Bill Draft Text Available Electronically	01/17/2005
(C) Draft in Input/Proofing	01/17/2005
(C) Draft to Drafter - Edit Review [CMD]	01/15/2005
(C) Draft in Edit	01/15/2005
(C) Draft in Legal Review	01/14/2005
(C) Draft to Requester for Review	01/13/2005
(C) Draft Taken Off Hold	01/12/2005
(C) Draft On Hold	11/08/2004
(C) Draft Request Received	11/04/2004

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Middle Initial
Requester	Parker	John	
Drafter	Lane	Valencia	
Primary Sponsor	Parker	John	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Courts (see also: Judges and Justices; Juries and Jurors)		Simple	CORT

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 557

DEADLINE

Category: General Bills

Transmittal Date: 03/01/2005

Return (with 2nd house amendments) Date: 04/06/2005

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 01-JUL-05

HOUSE BILL NO. 367

INTRODUCED BY J. PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. **Courts of record.** The court of impeachment, the supreme court, the district courts, ~~and the municipal courts, and the justices' courts of record~~ are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. **Qualifications.** Any of the following individuals may act as a judge pro tempore:

(1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;

(2) a retired judge of the district court;

(3) a justice of the peace for a justice's court ~~established as a court of record~~, provided for in 3-10-101;

(4) a municipal court judge; or

(5) a retired justice of the supreme court."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court ~~established as a~~ court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's court ~~established as a~~ court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge."

Section 4. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- justice's court ~~established as~~ court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

(a) one additional justice's court located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a "justice's

~~justice's court established as a court of record~~ record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through ~~3-10-117~~ and 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and all papers filed in a proceeding must be included in the record. A justice's ~~court established as a~~ court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

NEW SECTION. **Section 5. Powers and duties of justice's court of record.** (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's ~~court established as~~ court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's ~~court established as a~~ court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's ~~court established as a~~ court of record to the district court, the Montana Uniform Municipal

Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's ~~court established as a court of record.~~"

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's ~~court established as court of record -- judge pro tempore.~~ When a justice of the peace for a justice's ~~court established as a court of record~~ has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's ~~court established as a court of record~~, a municipal court judge, a retired justice of the peace for a justice's ~~court established as a court of record~~, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's ~~court established as a court of record.~~"

Section 8. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the course by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall

attend the training sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

~~----- (4) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in 3-10-117."~~

Section 9. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504.

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's ~~court established as a~~ court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 10. Section 25-31-601, MCA, is amended to read:

"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney~~+~~, and Except in a justice's court of record, any person, except the constable by whom the summons or jury process was served, may act as attorney."

Section 11. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to

be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's ~~court established as a~~ court of record pursuant to 3-10-101 is on the record as provided in 3-10-115."

Section 12. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

(h) notice of other crimes, wrongs, or acts, 46-13-109;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

- (l) reasonableness of bail, Title 46, chapter 9; and
- (m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 13. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's ~~court established as a~~ court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's ~~court established as a~~ court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended

sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

NEW SECTION. **Section 14. Repealer.** Section 3-10-117, MCA, is repealed.

NEW SECTION. **Section 15. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on February 4, 2005 at
8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: Rep. Michael Lange (R)
Rep. Roger Koopman (R)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 367, HB 526, 1/25/2005
Executive Action: HB 367-Do Pass, HB 243, 307-Do Pass
As Amended

HEARING ON HB 367

Sponsor: REP. JOHN PARKER, HD 23, GREAT FALLS

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, opened the hearing on HB 367, Revise laws to reflect Justice Courts as a court of record. REP. PARKER stated that he brought this bill at the request of Cascade County's Judge Harris.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 35}

Proponents' Testimony:

Sam Harris, Justice of the Peace-Cascade County, rose in support of HB 367. He spoke to the committee about changing some of the language in current statutes to clean up some of the provisions. Judge Harris stated that there is ongoing training for judges offered through the Continuing Lawyers Education (CLE) program.

{Tape: 1; Side: A; Approx. Time Counter: 35 - 80}

John Connor, Assistant Attorney General, informed the committee that the Prosecution Bureau within the Attorney General's office does the training for Justices of the Peace judges.

{Tape: 1; Side: A; Approx. Time Counter: 80 - 111}

Ted Clack, Montana Magistrates, spoke in support of HB 367.

{Tape: 1; Side: A; Approx. Time Counter: 111 - 127}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. STOKER queried Judge Harris whether or not town courts can become a Court of Record and what equipment is needed. Judge Harris replied in the affirmative that town courts can indeed become Courts of Record and the cost would be approximately \$1,000.

REP. RICE questioned Mr. Ted Clack (Montana Magistrates) about whether or not this was a piece of "creeping legislation" and if passage of this bill would eventually lead to Justices of the Peace judges having the requirement of being attorneys. Mr. Clack stated that he has reviewed this bill and it is in his opinion, "...not the intent of this bill to do that."

{Tape: 1; Side: A; Approx. Time Counter: 127 - 180}

Closing by Sponsor:

REP. PARKER closed the hearing of HB 367 and stated that it is certainly not his intent to require Justices of the Peace judges to be attorneys.

{Tape: 1; Side: A; Approx. Time Counter: 180 - 193}

HEARING ON HB 526

Opening Statement by Sponsor:

REP. SCOTT MENDENHALL (R), HD 77, opened the hearing on HB 526, Medical treatment, nutrition, and hydration to prevent death.

REP. MENDENHALL further stated that this bill would provide a patient an opportunity to sign a declaration to provide life saving measures that a physician may not override.

EXHIBIT(juh28a01)

{Tape: 1; Side: A; Approx. Time Counter: 193 - 252}

Proponents' Testimony:

Greg Trude, spoke in support of HB 526.

{Tape: 1; Side: A; Approx. Time Counter: 252 - 293}

Eric Scheidermeyer, Montana Catholic Conference, rose in support of HB 526 and stated, "...the patient should have the choice to live."

{Tape: 1; Side: A; Approx. Time Counter: 293 - 314}

Harris Himes, Montana Family Coalition, rose to support HB 526.

{Tape: 1; Side: A; Approx. Time Counter: 314 - 323}

Opponents' Testimony: None

Informational Testimony:

Anita Rossmann, Montana Advocacy Program, rose in opposition to HB 526 by saying that people with disabilities have no voice in these types of matters. Ms. Rossmann further stated that the advanced directives and living wills addressed in this bill are much too general and an amendment may be needed.

She related a story to the committee about an elderly disabled man; living in a group home that eventually died after a situation that would be applicable to the bill.

{Tape: 1; Side: A; Approx. Time Counter: 323 - 446}

Questions from Committee Members and Responses:

REP. BECKER asked the sponsor of HB 526 about the "five wishes" that as a nurse, she has come in contact within prior instances. She and **REP. MENDENHALL** discussed the new living wills where power of attorney is applied.

REP. NOENNIG then queried **REP. MENDENHALL** about the intent of this bill and the language in it that addresses the violation/penalty aspect of HB 526. **REP. MENDENHALL** explained that during the bill drafting process that language was added. The discussion then centered around the "unintended consequences" of HB 526.

REP. RICE spoke with **REP. MENDENHALL** about the situation where a patient's circumstances may be hopeless and the family deems it necessary to try to override the patient's wishes. She asked if there is language in the bill to address that. **REP. MENDENHALL** replied that there is language in HB 526 to designate someone to be in charge.

{Tape: 1; Side: A; Approx. Time Counter: 446 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 58}

Closing by Sponsor:

REP. MENDENHALL closed the hearing on HB 526 and stated that he would be open to an amendment that Ms. Rossmann had spoken of.

{Tape: 1; Side: B; Approx. Time Counter: 58 - 89}

EXECUTIVE ACTION ON HB 367

Motion: **REP. PARKER** moved that HB 367 DO PASS.

Discussion:

The committee discussed at length the language regarding non-attorneys presiding as judges in courts of records. **Mr.**

MacMaster was asked to explain the differences between courts of record, limited jurisdiction and "Trial DeNovo."

Vote: Motion carried unanimously by roll call vote 18-0.

(REPS. KOOPMAN, LANGE voted yes by proxy vote.)

{Tape: 1; Side: B; Approx. Time Counter: 89 - 294}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 2/4/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN			X
REP. MIKE LANGE			X
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

/s/JudicVisitorReg.sample2003



HOUSE STANDING COMMITTEE REPORT

February 4, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **House Bill 367** (first reading copy -- white) **do pass.**

Signed: *Diane Rice*
Representative Diane Rice, Chair

- END -

Committee Vote:
Yes 18, No 0.

281026SC.hkh
2/4/05
jlen

HOUSE BILL NO. 367

INTRODUCED BY



(Primary Sponsor)

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

THERE ARE NO CHANGES IN THIS BILL AND
IT WILL NOT BE REPRINTED. PLEASE REFER TO
SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

HOUSE BILL NO. 367

INTRODUCED BY Parker
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been

1 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
2 as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
3 justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in
4 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
5 authority as the municipal court judge."

6
7 **Section 4.** Section 3-10-101, MCA, is amended to read:

8 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
9 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
10 of the state, which must be located at the county seat. The board of county commissioners shall designate the
11 number of justices in each justice's court.

12 (2) The board of county commissioners of each county of the state may establish:

13 (a) one additional justice's court located anywhere in the county; and

14 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
15 subsection (3).

16 (3) A city having a population of over 5,000 may, by resolution, request the board of county
17 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
18 board of county commissioners approves the request by resolution.

19 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
20 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
21 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
22 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
23 and for proportionate reimbursement for the use of facilities.

24 (5) A county may establish the justice's court as a court of record. If the justice's court is established
25 as a court of record, it must be known as a "justice's court established as a court of record" and,
26 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
27 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
28 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record
29 may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

NEW SECTION. Section 5. Powers and duties of justice's court of record. (1) Except as otherwise

provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's court established as court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's court established as a court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's court established as a court of record."

1 **Section 8.** Section 3-10-203, MCA, is amended to read:

2 **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court, a
3 course of study must be presented as soon as is practical following each general election. Actual and necessary
4 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
5 and other materials must be paid to the elected or appointed justice of the peace for attending the course by the
6 county in which the justice of the peace holds or will hold court and must be charged against that county.

7 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
8 by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be
9 held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses,
10 as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other
11 materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county
12 in which the justice of the peace holds or will hold court and must be charged against that county.

13 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
14 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
15 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
16 because of illness, a death in the family, or any other good cause.

17 (4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-104,~~
18 ~~must meet the requirements provided for in 3-10-117."~~

19

20 **Section 9.** Section 3-10-207, MCA, is amended to read:

21 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
22 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
23 provided in 7-4-2504.

24 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
25 in that county.

26 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
27 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
28 justice's term of office.

29 (4) The salary of the justice of the peace for a justice's court established as a court of record may not
30 exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

1
2 **Section 10.** Section 25-31-601, MCA, is amended to read:

3 **"25-31-601. Who may act as attorney.** Parties in justice's court may appear and act in person or by
4 attorney, and Except in a justice's court of record, any person, except the constable by whom the summons or
5 jury process was served, may act as attorney."
6

7 **Section 11.** Section 25-33-301, MCA, is amended to read:

8 **"25-33-301. Trial de novo -- pleadings -- conduct of trial.** (1) Except as provided in subsection (3),
9 all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's
10 or city court unless the court, for good cause shown and on terms that are just, allows other or amended
11 pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has
12 the benefit of all legal objections made in the justice's or city court.

13 (2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials
14 in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal
15 in the district court.

16 (3) The appeal from a justice's court ~~established as a~~ court of record pursuant to 3-10-101 is on the
17 record as provided in 3-10-115."
18

19 **Section 12.** Section 46-13-110, MCA, is amended to read:

20 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but
21 not less than 30 days before trial, the court shall hold an omnibus hearing.

22 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

23 (3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the
24 defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate
25 to the case, including but not limited to:

26 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

27 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

28 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

29 (d) notification of the existence of a plea agreement, 46-12-211;

30 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;

- (f) notice of reliance on certain defenses, 46-15-323;
(g) notice of seeking persistent felony offender status, 46-13-108;
(h) notice of other crimes, wrongs, or acts, 46-13-109;
(i) motion to suppress, 46-13-301 and 46-13-302;
(j) motion to dismiss, 46-13-401 and 46-13-402;
(k) motion for change of place of trial, 46-13-203 through 46-13-205;
(l) reasonableness of bail, Title 46, chapter 9; and
(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 13. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

1 (4) A defendant may appeal a justice's court, other than a justice's court ~~established as a court of~~
2 record, or city court revocation of a suspended sentence to the district court. The district court judge shall
3 determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation
4 procedure.

5 (5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet
6 a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative
7 or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon
8 dismissal, the appealed judgment is reinstated and becomes the operative judgment."

9
10 NEW SECTION. **Section 14. Repealer.** Section 3-10-117, MCA, is repealed.

11
12 NEW SECTION. **Section 15. Codification instruction.** [Section 5] is intended to be codified as an
13 integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

14
15 NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

16 - END -

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 8, 2005 at 8:05 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 474, 3/3/2005; HB 367, 3/3/2005;
HB 425, 3/3/2005; HB 473, 3/3/2005;
HB 429, 3/3/2005; HB 762, 3/3/2005;
HB 615, 3/3/2005
Executive Action: HB 24, HB 25, HB 26, HB 64, HB 110,
HB 429

HEARING ON HB 474

{Tape: 1; Side: A; Approx. Time Counter: 0.6 - 7.3}

Opening Statement by Sponsor:

REP. ROSALIE (ROSIE) BUZZAS (D), HD 93, said that she is sponsoring HB 474 at the request of the MT Association of Counties (MACo). HB 474 eliminates the requirement that a county legal notice must be published in a newspaper with a paid circulation and a periodicals mailing permit. HB 474 does not eliminate the requirement for counties to publish legal notices, but allows them to do so in a competitive manner with newspapers that do not have paid circulations and mailing permits.

Proponents' Testimony:

Gordon Morris, Director, MACo, said that MACo members support HB 474 which eliminates the requirement that a county legal notice has to be published in a newspaper with a paid circulation. MACo is looking at newspapers that would be distributed free and do not have subscriptions. As a result, there is no requirement for a mailing permit which is fairly expensive.

Opponents' Testimony:

Colin Stephens, MT Newspaper Association, requested that testimony on HB 474 be discontinued until a later date because many of the Association's members were out of town and unable to comment on the bill.

SEN. MICHAEL WHEAT, SD 32, honored the request and suspended the hearing on HB 474 until a later date.

Both **SEN. JEFF MANGAN, SD 12**, and **REP. BUZZAS** objected to the continuation because the hearing was properly noticed.

HEARING ON HB 367

{Tape: 1; Side: A; Approx. Time Counter: 7.3 - 13.3}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 367 was a housekeeping bill designed to clarify several points related to a bill passed in the 2003 Session which created an option for Justice Courts to establish themselves as courts of record. There are a number of opportunities that flow from making that choice in terms of

judicial efficiency. HB 367 streamlines the process for appeals and eliminates a certain category of frivolous appeals.

Proponents' Testimony:

Sam Harris, Justice of the Peace, Cascade County, said that HB 367 clarifies language both for the ease of the Courts and the access of the public. It shortens the name of the Court which is useful in the repetitive times that it has to be referred to in written documents, and it inserts language with the Justice Court of record in many places where only the Municipal Court was mentioned. The language was very confusing to the public because it did not know which sections of law applied to which Court. HB 367 also removes the provision that exempted attorneys from annual training which the Supreme Court did not allow for under its rulemaking authority.

Ted Klack, MT Magistrates Association, and Gordon Morris, Director, MACo, spoke in support of HB 367.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 1; Side: A; Approx. Time Counter: 13.3 - 21.8}

Questions from Committee Members and Responses:

SEN. JESSE LASLOVICH, SD 43, asked if the language in HB 367 applied to Municipal Court Judges as well. **Mr. Harris** said, yes, it is the same language that applies to Municipal Court Judges. It does not increase the jurisdiction of the Court, only the types of powers the Courts have in handling the cases before them.

SEN. BRENT CROMLEY, SD 25, asked if HB 367 requires that all Justice Courts be courts of record. **REP. PARKER** said that HB 367 does not change the nature of existing law which states that Justice Courts can determine whether or not they want to become courts of record. There is nothing mandatory in current law or HB 367.

SEN. JERRY O'NEIL, SD 3, asked how many Justice Courts, at the present time, have Justices of the Peace (JPs) who are not licensed attorneys. **REP. PARKER** was unsure, but HB 367 was not designed to establish the requirement that all JPs be licensed attorneys. **SEN. O'NEIL,** asked why HB 367 deletes the ability for a friend or relative to represent someone in Justice Court. **Mr. Harris** replied that there is some difference in the nature of the

proceeding in the court of record. The thinking is that any mistakes made can be reviewed and addressed upon appeal. In a court of record, that is not the case. The person gets one shot. It is the Courts authority and ability to decide who comes before it as parties and litigants. The provision is abused more than it is used in Montana Courts.

Closing by Sponsor:

REP. PARKER urged the Committee's support of HB 367.

HEARING ON HB 425

{Tape: 1; Side: A; Approx. Time Counter: 21.9 - 24.5}

Opening Statement by Sponsor:

REP. JOHN PARKER (D), HD 23, said that HB 425 transfers the state's Consumer Protection Agency and its functions from the Department of Administration to the Department of Justice (DOJ). He said that state budget resources are slim, and the Legislature will deliver more value to the taxpayers by placing this function with an existing office that has a team of seasoned litigators and experienced prosecutors rather than a stand-alone agency. Another consideration is the implementation of the state public defender system. He felt that having a state public defender system under the Department of Administration and a law enforcement function in the same agency could potentially pose a conflict of interest because litigation will be happening on both sides of an issue.

{Tape: 1; Side: A; Approx. Time Counter: 24.5 - 28.6}

Proponents' Testimony:

Del Lonnquist, AARP Montana, provided written comments in support of HB 425.

EXHIBIT(jus51a01)

Opponents' Testimony: None.

{Tape: 1; Side: B; Approx. Time Counter: 37.7 - 41.4}

Informational Testimony:

Galen Hollenbaugh, Deputy Chief of Staff, DOJ, was available to answer questions.

MONTANA SENATE
2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 3-8-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	X		
SEN. BRENT CROMLEY	X		
SEN. AUBYN CURTISS	X		
SEN. JON ELLINGSON	X		
SEN. JESSE LASLOVICH	X		
SEN. JEFF MANGAN	X		
SEN. DAN MCGEE	X		
SEN. LYNDA MOSS	X		
SEN. JERRY O'NEIL	X		
SEN. GERALD PEASE			X
SEN. GARY PERRY	X		
SEN. JIM SHOCKLEY	X		
VALENCIA LANE, LSD			
MARI PREWETT, COMMITTEE SECRETARY			

DATE

March 8, 2005

SENATE COMMITTEE ON

Judiciary

BILLS BEING HEARD TODAY:

HB 367, HB 425, HB 429,
HB 473, HB 474, HB 615, HB 726

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Rhoda Cargill	406 295-4052	GRASSP	HB 615		X
JOHN ARRIGO	444-5327	DEQ	HB 429	X	
Paul BRADY	468-2149	Dearborn VFD	HB 473	X	
LEONARD LUNDY	727-5968	VAUGHN VFD	HB 473	X	
Ted Clark	442-9024	MT Magistrates	HB 367	X	
BUD CLINCH	442-6223	MT COAL COUNCIL	HB 429	X	
Colin M. Stephens	331-7724	MT Newspaper Assn	HB 474		X
Mike Ruppert	431-1357	Boyd Andrew C.S.	HB 726	X	
DEL LONNQUIST	439-4217	AARP	HB 425	X	
John Wilson	444-9932	MT Trout Unlimited	HB 615	X	
Gordon Jones		MAC	HB 474	X	
John Semple	443-7487	MT FIRE ALLIANCE	HB 473	X	
Michelle Jenicik	444-4910	DOC	HB 726	X	

Van Alsby

9529

R/P

VISITOR REGISTER

726 X

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATEMENT SECRETARY

DATE

March 8

SENATE COMMITTEE ON JudiciaryBILLS BEING HEARD TODAY: HB 367, HB 425, HB 429HB 473, HB 474, HB 615, HB 724

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
<u>Borden Murris</u>		<u>MACo</u>	<u>HB 367</u>		
<u>Alan Hollenbach</u>		<u>MT DOJ</u>	<u>HB 615</u>	<u>X</u>	
<u>Gail Abercrombie</u>		<u>MT Petroleum Assoc.</u>	<u>HB 615</u> <u>HB 429</u>	<u>X</u>	<u>X</u>
<u>M. S. KAKUK</u>	<u>443-7788</u>	<u>MT CONTRACTORS ASSC.</u>	<u>HB 429</u>	<u>✓</u>	
<u>M. S. KAKUK</u>	<u>443-7788</u>	<u>MT CONTRACTORS ASSC.</u> <u>MT Assoc. Builders</u>	<u>HB 615</u>		<u>✓</u>
<u>Don Allen</u>	<u>443-7531</u>	<u>WETA</u>	<u>HB 429</u> <u>615</u>	<u>✓</u>	<u>X</u>
<u>Anne Hedgoc</u>	<u>443-2520</u>	<u>MEIC</u>	<u>615</u>	<u>X</u>	
<u>Jeff Barber</u>	<u>594-2415</u>	<u>MEIC</u>	<u>HB 429</u>	<u>X</u>	
<u>Art Noonan</u>	<u>4190-7261</u>	<u>Rep.</u>	<u>HB 615</u>		
<u>Tom Ebzery</u>	<u>441-7531</u>	<u>Exxon Mobil</u>	<u>HB 429</u>		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATEHOUSE SECURITY OFFICE

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 14, 2005 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 201, HB 49, HB 191, HB 696
Executive Action: HB 97; HB 98; HB 285; HB 345; HB
349; HB 363; HB 367

only provide immunity for healthcare providers that are defined by 50-4-504 while SB 172 would apply to all kinds of emergency responders.

SEN. O'NEIL withdrew his motion to amend HB 363.

SEN. SHOCKLEY withdrew his motion to concur in HB 363.

{Tape: 4; Side: A; Approx. Time Counter: 15.9 - 18.4}

EXECUTIVE ACTION ON HB 367

Motion: **SEN. MANGAN** moved that HB 367 BE CONCURRED IN.

Discussion: **SEN. O'NEIL** wanted to strike Subsection 10 from the bill so that it would leave the law in existence about who may appear and act as an attorney in a justice court.

Motion: **SEN. O'NEIL** moved that HB 367 BE AMENDED BY DELETING SECTION 10.

Discussion: **SEN. O'NEIL** related that the reason he wanted to strike this section was that present law states that a person going into a justice court can have a parent, spouse, or friend appear and speak for them in the justice court. He thought that if Section 10 were amended then they would not have any help in a justice court.

SEN. PERRY asked if a justice in a justice court of record need not be an attorney.

SEN. CROMLEY replied that the bill would allow a justice court to be a court of record. However, they had not changed the law providing whether or not the judge needed to be an attorney to serve in a justice court or a justice court of records. He believed that a justice did not need to be an attorney.

SEN. PERRY asked, if a judge did not need to be an attorney, then why would a person representing an individual be required to be an attorney.

SEN. CROMLEY responded that the judge was required to go through a certain number of training hours.

{Tape: 4; Side: A; Approx. Time Counter: 18.4 - 23.5}

SEN. SHOCKLEY asked for clarification on the amendment. He wanted to know if **SEN. O'NEIL** wanted to strike all of Section 10 or the portion of the statute that would be amended.

SEN. O'NEIL clarified that if they did not amend Section 10 they would not allow a non-attorney to represent someone in a justice court but allowing someone's parent, friend, etc., to help them on a one-time-only basis in justice court.

{Tape: 4; Side: A; Approx. Time Counter: 23.5 - 24.8}

Vote: Motion failed 3-9 by voice vote with **SEN. MCGEE**, **SEN. O'NEIL**, and **SEN. PERRY** voting aye and **SEN. WHEAT** voting no by proxy.

SEN. O'NEIL commented that an individual is not allowed to have anyone come with them to justice court to speak on their behalf. He expressed that without this bill the individual would have been allowed to have someone else with them. He asserted that they would not be able to have a jury trial in a district court because they were stuck to the record created by the justice court. He thought that they needed to kill the bill.

Vote: Motion carried 7-5 by voice vote with **SEN. CURTISS**, **SEN. MCGEE**, **SEN. O'NEIL**, **SEN. PERRY**, and **SEN. SHOCKLEY** voting no with **SEN. WHEAT** voting aye by proxy.

{Tape: 4; Side: A; Approx. Time Counter: 24.8 - 29.6}

SEN. MANGAN offered to carry HB 367 on the Senate floor.

{Tape: 4; Side: A; Approx. Time Counter: 29.6 - 30.4}

Additional documents include a letter to the Committee from the Honorable Wayne Phillips regarding HB 280.

EXHIBIT(jus56b09)

State Of Montana

Exhibit No. 9

Date 03-14-05

Bill No. HB 280

TENTH JUDICIAL DISTRICT COURT

Judith Basin, Fergus & Petroleum Counties

HON. E. WAYNE PHILLIPS,
DISTRICT JUDGEP.O. Box 1124
Lewistown, MT 59457Harry Rauch, Court Reporter
Arlene M. Mari, Court Adm.
ph (406)538-8028
fax (406)538-6076

March 11, 2005

Dear Chairman Wheat and Committee Members:

Thank you for the opportunity to respond to the Montana Advocacy Program (MAP) opposition to HB 280. MAP misconstrues this bill and engages in hyperbolic, highly speculative analysis of the bill's actual outcomes. Based on the written testimony I received, MAP contends the legislation "will impair the right of defendants in criminal proceedings to counsel, to be present at critical stages of criminal proceedings and to due process."

First, the right to counsel is a fundamental right established under the Montana and U.S. Constitutions. HB 280 does not address or impact the right to counsel in any way, shape or form.

Second, is a defendant any less "present" under law if actually in the courtroom where the judge is or by video conference? Having conducted numerous video conference proceedings, I can affirm for the Committee that in the proceedings HB 280 will allow, there is no realistic or legal difference.

Third, what due process rights are violated? Sentencing hearings are not required to follow the laws of evidence and have a format and import which are more amenable to a video conference format than nearly any other legal proceeding. It is a very rare case where sentencing takes more than one-half hour. To drive to Havre, Shelby, Virginia City, Roundup or various other cities where I have taken cases for other judges for so straight forward a proceeding is a terribly inefficient use of time and taxpayer dollars.

Taking a plea is even less involved and more clearly procedural (with a very defined legal colloquy required). There are basic rights which must be communicated, and it takes two minutes.

MAP also claims that video sentencing or taking of a plea "will result in unsound judgments and sentences, easily challenged under the Montana and U.S. Constitutions." They made the same argument before the House Judiciary Committee by misleading the Committee about a Ninth Circuit Court of Appeals case. Before the Senate Judiciary

Chairman Wheat and Committee Members
March 11, 2005
Page 2

Committee they don't even try to cite that case or any law in their favor. In fact, there is none.

Can I predict the result of an appeal of such a sentence or plea? No. But we District Judges are confident the approach has solid, very defensible legal grounding.

MAP does present a substantive concern about the mental state of defendants and whether teleconferencing would lessen the court's ability to perceive such a mental state and adjust the proceedings accordingly. First and foremost, mental state issues would not be a surprise only "discovered" by the court at the taking of a plea or at sentencing, irregardless whether conducted in person or by video conference. Those matters are to be raised by counsel before the initial appearance or, if indications are present, addressed *sua sponte* by the court when it informs a defendant of his or her rights. One of the fundamental elements of the rights colloquy addresses mental state very specifically. In other words, mental state issues/problems will have been previously addressed and a judge can factor in any considerations necessary before taking a plea or conducting sentencing by video conference and determining whether in person hearings are necessary or appropriate.

MAP states: "They are unlikely to insist on being present in court in order to improve their chances of effectively participating in and understanding a change of plea or sentencing proceeding." Frankly, this is incomprehensible. The Defendant does appear in a courtroom. Effective participation is not changed as they are represented every moment by counsel. A defendant has a legal advocate through whom he or she participates, insists, questions, and seeks understanding.

The District Judges oppose the amendments sought by MAP. The proposed amendment requiring written waiver adds another layer of process which causes delay. The legislation already requires waiver. That is procedurally sufficient.

The physical presence of counsel with the defendant is also unnecessary. In fact, allowing video conferencing between client and attorney creates the opportunity for greater access by a defendant particularly in rural districts where we are forced to obtain counsel from over 100 miles away.

Finally, the requirement that a court be bound by a plea agreement entered through video conference reduces the flexibility so critical in good sentencing. The practical effect would be to preclude many uses of video conferencing because a judge wants the ability to conform sentencing to the facts and situation rather than a plea agreement.

Chairman Wheat and Committee Members
March 11, 2005
Page 3

It appears that the MAP is projecting into a courtroom process problems that are addressed in other, substantive procedures, is misconstruing the appropriate timeliness of when mental status issues are to be raised, and completely discounts the services of defense counsel in favor of broad, over generalized and unspecified infirmities that rarely occur.

This legislation will save significant resources and time and will address positively the one area in which courts receive criticism – delay in justice. the District Judges encourage a do pass recommendation from the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Wayne Phillips". The signature is fluid and cursive, with the first name "E" being particularly large and stylized.

Hon. E. Wayne Phillips



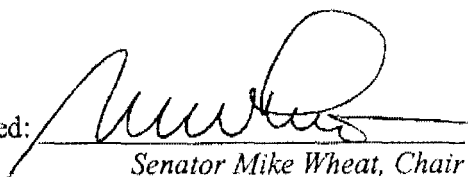
SENATE STANDING COMMITTEE REPORT

March 14, 2005

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **House Bill 367** (third reading copy -- blue) be concurred in.

Signed: 
Senator Mike Wheat, Chair

To be carried by Senator Jeff Mangan

- END -

Committee Vote:
Yes 7, No 5.

561247SC.ssc

Handwritten initials, possibly "KA", in the bottom right corner.

HOUSE BILL NO. 367

INTRODUCED BY Parker
(Primary Sponsor)

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been

1 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
2 as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
3 justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in
4 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
5 authority as the municipal court judge."

6
7 **Section 4.** Section 3-10-101, MCA, is amended to read:

8 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
9 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
10 of the state, which must be located at the county seat. The board of county commissioners shall designate the
11 number of justices in each justice's court.

12 (2) The board of county commissioners of each county of the state may establish:

13 (a) one additional justice's court located anywhere in the county; and

14 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
15 subsection (3).

16 (3) A city having a population of over 5,000 may, by resolution, request the board of county
17 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
18 board of county commissioners approves the request by resolution.

19 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
20 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
21 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
22 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
23 and for proportionate reimbursement for the use of facilities.

24 (5) A county may establish the justice's court as a court of record. If the justice's court is established
25 as a court of record, it must be known as a "justice's court established as a court of record" and
26 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
27 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
28 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record
29 may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

1 **NEW SECTION. Section 5. Powers and duties of justice's court of record.** (1) Except as otherwise
2 provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in
3 matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace
4 may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

5 (2) The justice's court of record shall establish rules for appeal to district court. The rules are subject
6 to the supreme court's rulemaking and supervisory authority.

7
8 **Section 6.** Section 3-10-115, MCA, is amended to read:

9 **"3-10-115. Appeal to district court from justice's court established as court of record -- record**
10 **on appeal.** (1) A party may appeal to district court a judgment or order from a justice's court established as a
11 court of record. The appeal is confined to review of the record and questions of law, subject to the supreme
12 court's rulemaking and supervisory authority.

13 (2) The record on appeal to district court consists of an electronic recording or stenographic transcription
14 of a case tried, together with all papers filed in the action.

15 (3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the
16 proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from
17 which the appeal was taken.

18 (4) Unless the supreme court establishes rules for appeal from a justice's court established as a court
19 of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified
20 in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

21
22 **Section 7.** Section 3-10-116, MCA, is amended to read:

23 **"3-10-116. Disqualification of justice of peace for justice's court established as court of record**
24 **-- judge pro tempore.** When a justice of the peace for a justice's court established as a court of record has been
25 disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court
26 established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court
27 established as a court of record, a retired municipal court judge, or an attorney of the county in which the court
28 is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice
29 of the peace for the justice's court established as a court of record."

1 **Section 8.** Section 3-10-203, MCA, is amended to read:

2 **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court, a
3 course of study must be presented as soon as is practical following each general election. Actual and necessary
4 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
5 and other materials must be paid to the elected or appointed justice of the peace for attending the course by the
6 county in which the justice of the peace holds or will hold court and must be charged against that county.

7 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
8 by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be
9 held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses,
10 as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other
11 materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county
12 in which the justice of the peace holds or will hold court and must be charged against that county.

13 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
14 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
15 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
16 because of illness, a death in the family, or any other good cause.

17 (4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101,~~
18 ~~must meet the requirements provided for in 3-10-117."~~

19
20 **Section 9.** Section 3-10-207, MCA, is amended to read:

21 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
22 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
23 provided in 7-4-2504.

24 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
25 in that county.

26 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
27 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
28 justice's term of office.

29 (4) The salary of the justice of the peace for a justice's court established as a court of record may not
30 exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

1
2 **Section 10.** Section 25-31-601, MCA, is amended to read:

3 **"25-31-601. Who may act as attorney.** Parties in justice's court may appear and act in person or by
4 attorney, ~~and~~ Except in a justice's court of record, any person, except the constable by whom the summons or
5 jury process was served, may act as attorney."
6

7 **Section 11.** Section 25-33-301, MCA, is amended to read:

8 **"25-33-301. Trial de novo -- pleadings -- conduct of trial.** (1) Except as provided in subsection (3),
9 all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's
10 or city court unless the court, for good cause shown and on terms that are just, allows other or amended
11 pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has
12 the benefit of all legal objections made in the justice's or city court.

13 (2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials
14 in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal
15 in the district court.

16 (3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the
17 record as provided in 3-10-115."
18

19 **Section 12.** Section 46-13-110, MCA, is amended to read:

20 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but
21 not less than 30 days before trial, the court shall hold an omnibus hearing.

22 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

23 (3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the
24 defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate
25 to the case, including but not limited to:

26 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

27 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

28 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

29 (d) notification of the existence of a plea agreement, 46-12-211;

30 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;

- (f) notice of reliance on certain defenses, 46-15-323;
(g) notice of seeking persistent felony offender status, 46-13-108;
(h) notice of other crimes, wrongs, or acts, 46-13-109;
(i) motion to suppress, 46-13-301 and 46-13-302;
(j) motion to dismiss, 46-13-401 and 46-13-402;
(k) motion for change of place of trial, 46-13-203 through 46-13-205;
(l) reasonableness of bail, Title 46, chapter 9; and
(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 13. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

1 (4) A defendant may appeal a justice's court, other than a justice's court established as a court of
2 record, or city court revocation of a suspended sentence to the district court. The district court judge shall
3 determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation
4 procedure.

5 (5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet
6 a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative
7 or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon
8 dismissal, the appealed judgment is reinstated and becomes the operative judgment."

9
10 NEW SECTION. **Section 14. Repealer.** Section 3-10-117, MCA, is repealed.

11
12 NEW SECTION. **Section 15. Codification instruction.** [Section 5] is intended to be codified as an
13 integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

14
15 NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

16 - END -

HOUSE BILL NO. 367
INTRODUCED BY PARKER

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

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(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

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4 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
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7 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
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12 in which the justice of the peace holds or will hold court and must be charged against that county.

13 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
14 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
15 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
16 because of illness, a death in the family, or any other good cause.

17 (4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101,~~
18 ~~must meet the requirements provided for in 3-10-117."~~

19
20 **Section 9.** Section 3-10-207, MCA, is amended to read:

21 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
22 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
23 provided in 7-4-2504.

24 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
25 in that county.

26 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
27 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
28 justice's term of office.

29 (4) The salary of the justice of the peace for a justice's court ~~established as a court of record~~ may not
30 exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 10. Section 25-31-601, MCA, is amended to read:

"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney; and Except in a justice's court of record, any person, except the constable by whom the summons or jury process was served, may act as attorney."

Section 11. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's ~~court established as a~~ court of record pursuant to 3-10-101 is on the record as provided in 3-10-115."

Section 12. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

- (f) notice of reliance on certain defenses, 46-15-323;
(g) notice of seeking persistent felony offender status, 46-13-108;
(h) notice of other crimes, wrongs, or acts, 46-13-109;
(i) motion to suppress, 46-13-301 and 46-13-302;
(j) motion to dismiss, 46-13-401 and 46-13-402;
(k) motion for change of place of trial, 46-13-203 through 46-13-205;
(l) reasonableness of bail, Title 46, chapter 9; and
(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 13. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's court established as a court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

NEW SECTION. **Section 14. Repealer.** Section 3-10-117, MCA, is repealed.

NEW SECTION. **Section 15. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

- END -

HOUSE BILL NO. 367

INTRODUCED BY PARKER

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been

1 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
2 as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
3 justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in
4 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
5 authority as the municipal court judge."

6
7 **Section 4.** Section 3-10-101, MCA, is amended to read:

8 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
9 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
10 of the state, which must be located at the county seat. The board of county commissioners shall designate the
11 number of justices in each justice's court.

12 (2) The board of county commissioners of each county of the state may establish:

13 (a) one additional justice's court located anywhere in the county; and

14 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
15 subsection (3).

16 (3) A city having a population of over 5,000 may, by resolution, request the board of county
17 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
18 board of county commissioners approves the request by resolution.

19 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
20 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
21 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
22 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
23 and for proportionate reimbursement for the use of facilities.

24 (5) A county may establish the justice's court as a court of record. If the justice's court is established
25 as a court of record, it must be known as a "justice's court established as a court of record" and,
26 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
27 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
28 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record
29 may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

NEW SECTION. Section 5. Powers and duties of justice's court of record. (1) Except as otherwise

provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's court established as court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's court established as a court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's court established as a court of record."

1 **Section 8.** Section 3-10-203, MCA, is amended to read:

2 **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court, a
3 course of study must be presented as soon as is practical following each general election. Actual and necessary
4 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
5 and other materials must be paid to the elected or appointed justice of the peace for attending the course by the
6 county in which the justice of the peace holds or will hold court and must be charged against that county.

7 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
8 by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be
9 held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses,
10 as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other
11 materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county
12 in which the justice of the peace holds or will hold court and must be charged against that county.

13 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
14 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
15 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
16 because of illness, a death in the family, or any other good cause.

17 (4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;~~
18 ~~must meet the requirements provided for in 3-10-117."~~

19
20 **Section 9.** Section 3-10-207, MCA, is amended to read:

21 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
22 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
23 provided in 7-4-2504.

24 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
25 in that county.

26 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
27 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
28 justice's term of office.

29 (4) The salary of the justice of the peace for a justice's court ~~established as a court of record~~ may not
30 exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

1
2 **Section 10.** Section 25-31-601, MCA, is amended to read:

3 **"25-31-601. Who may act as attorney.** Parties in justice's court may appear and act in person or by
4 attorney, and Except in a justice's court of record, any person, except the constable by whom the summons or
5 jury process was served, may act as attorney."
6

7 **Section 11.** Section 25-33-301, MCA, is amended to read:

8 **"25-33-301. Trial de novo -- pleadings -- conduct of trial.** (1) Except as provided in subsection (3),
9 all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's
10 or city court unless the court, for good cause shown and on terms that are just, allows other or amended
11 pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has
12 the benefit of all legal objections made in the justice's or city court.

13 (2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials
14 in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal
15 in the district court.

16 (3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the
17 record as provided in 3-10-115."
18

19 **Section 12.** Section 46-13-110, MCA, is amended to read:

20 **"46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but
21 not less than 30 days before trial, the court shall hold an omnibus hearing.

22 (2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

23 (3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the
24 defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate
25 to the case, including but not limited to:

26 (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

27 (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

28 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

29 (d) notification of the existence of a plea agreement, 46-12-211;

30 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;

- (f) notice of reliance on certain defenses, 46-15-323;
- (g) notice of seeking persistent felony offender status, 46-13-108;
- (h) notice of other crimes, wrongs, or acts, 46-13-109;
- (i) motion to suppress, 46-13-301 and 46-13-302;
- (j) motion to dismiss, 46-13-401 and 46-13-402;
- (k) motion for change of place of trial, 46-13-203 through 46-13-205;
- (l) reasonableness of bail, Title 46, chapter 9; and
- (m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 13. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's court established as a court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

NEW SECTION. **Section 14. Repealer.** Section 3-10-117, MCA, is repealed.

NEW SECTION. **Section 15. Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

NEW SECTION. **Section 16. Effective date.** [This act] is effective July 1, 2005.

- END -

HOUSE BILL NO. 367

INTRODUCED BY PARKER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; ~~PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; PROVIDING THAT AN APPEAL FROM A JUSTICE'S COURT OF RECORD TO THE DISTRICT COURT IS ON THE RECORD AND NOT DE NOVO ONLY IF ALL THE PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD~~; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-31-601, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, ~~and the municipal courts, and the justices' courts of record~~ are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court established as a court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

1 **Section 3.** Section 3-6-204, MCA, is amended to read:

2 **"3-6-204. Disqualification -- judge pro tempore.** When a judge of a municipal court has been
3 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
4 as a court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
5 justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in
6 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
7 authority as the municipal court judge."
8

9 **Section 4.** Section 3-10-101, MCA, is amended to read:

10 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
11 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
12 of the state, which must be located at the county seat. The board of county commissioners shall designate the
13 number of justices in each justice's court.

14 (2) The board of county commissioners of each county of the state may establish:

15 (a) one additional justice's court located anywhere in the county; and

16 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
17 subsection (3).

18 (3) A city having a population of over 5,000 may, by resolution, request the board of county
19 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
20 board of county commissioners approves the request by resolution.

21 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
22 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
23 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
24 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
25 and for proportionate reimbursement for the use of facilities.

26 (5) A county may establish the justice's court as a court of record. If the justice's court is established
27 as a court of record, it must be known as a "justice's court established as a court of record" and
28 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
29 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
30 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record

may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

NEW SECTION. Section 5. Powers and duties of justice's court of record. (1) Except as otherwise

provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's court established as court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's court established as a court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice

1 of the peace for the justice's court established as a court of record."

2
3 **Section 8.** Section 3-10-203, MCA, is amended to read:

4 **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court, a
5 course of study must be presented as soon as is practical following each general election. Actual and necessary
6 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
7 and other materials must be paid to the elected or appointed justice of the peace for attending the course by the
8 county in which the justice of the peace holds or will hold court and must be charged against that county.

9 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
10 by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be
11 held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses,
12 as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other
13 materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county
14 in which the justice of the peace holds or will hold court and must be charged against that county.

15 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
16 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
17 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
18 because of illness, a death in the family, or any other good cause.

19 (4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101,~~
20 ~~must meet the requirements provided for in 3-10-117."~~

21
22 **Section 9.** Section 3-10-207, MCA, is amended to read:

23 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
24 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
25 provided in 7-4-2504.

26 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
27 in that county.

28 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
29 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
30 justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

~~Section 10. Section 25-31-601, MCA, is amended to read:~~

~~"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney, and Except in a justice's court of record, any person, except the constable by whom the summons or jury process was served, may act as attorney."~~

Section 10. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in 3-10-115 IF ALL PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD."

Section 11. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

- 1 (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;
- 2 (d) notification of the existence of a plea agreement, 46-12-211;
- 3 (e) disclosure and discovery motions, Title 46, chapter 15, part 3;
- 4 (f) notice of reliance on certain defenses, 46-15-323;
- 5 (g) notice of seeking persistent felony offender status, 46-13-108;
- 6 (h) notice of other crimes, wrongs, or acts, 46-13-109;
- 7 (i) motion to suppress, 46-13-301 and 46-13-302;
- 8 (j) motion to dismiss, 46-13-401 and 46-13-402;
- 9 (k) motion for change of place of trial, 46-13-203 through 46-13-205;
- 10 (l) reasonableness of bail, Title 46, chapter 9; and
- 11 (m) stipulations.

12 (4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be
13 signed by the court and counsel and filed with the court.

14 (5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time
15 of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers
16 necessary."

17

18 **Section 12.** Section 46-17-311, MCA, is amended to read:

19 **"46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in
20 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for
21 appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district
22 court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal
23 from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court
24 ~~established as a~~ court of record is governed by 3-10-115.

25 (2) The defendant may appeal to the district court by filing written notice of intention to appeal within
26 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided
27 in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the
28 date that the order complained of is given. The prosecution may appeal only in the cases provided for in
29 46-20-103.

30 (3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the

1 court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record
2 if the notice of appeal is not timely filed. The defendant may petition the district court to order the record
3 transmitted upon a showing of good cause for failure to timely file the notice of appeal.

4 (4) A defendant may appeal a justice's court, other than a justice's court established as a court of
5 record, or city court revocation of a suspended sentence to the district court. The district court judge shall
6 determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation
7 procedure.

8 (5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet
9 a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative
10 or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon
11 dismissal, the appealed judgment is reinstated and becomes the operative judgment."

12
13 NEW SECTION. Section 13. Repealer. Section 3-10-117, MCA, is repealed.

14
15 NEW SECTION. Section 14. Codification instruction. [Section 5] is intended to be codified as an
16 integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

17
18 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 2005.

19 - END -



CONFERENCE COMMITTEE

on Senate amendments to House Bill 367

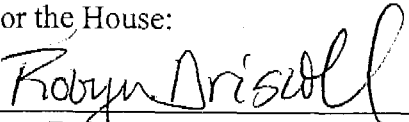
Report No. 1, April 14, 2005

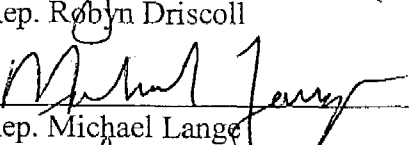
Page 1 of 2

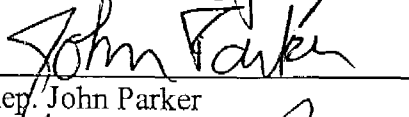
Mr. Speaker and Mr. President:

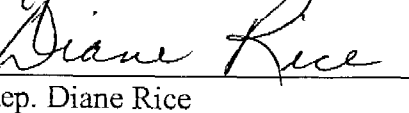
We, your Conference Committee met and considered Senate amendments to **House Bill 367** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

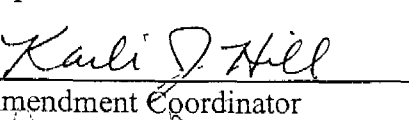
For the House:


Rep. Robyn Driscoll


Rep. Michael Lange

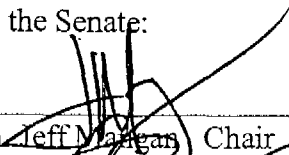

Rep. John Parker

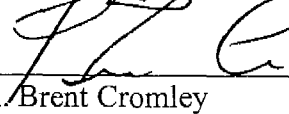

Rep. Diane Rice


Amendment Coordinator


Chief Clerk of the House

For the Senate:


Sen. Jeff Mangum Chair


Sen. Brent Cromley


Sen. Gary Perry

And, recommend that **House Bill 367** (reference copy -- salmon) be amended as follows:

1. Title, line 7 through line 10.

Following: "RECORD," on line 7

Strike: "PROVIDING THAT AN APPEAL FROM A JUSTICE'S COURT OF RECORD TO THE DISTRICT COURT IS ON THE RECORD AND NOT DE NOVO ONLY IF ALL THE PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD;"

ADOPT

Amendment # HB 367-1

REJECT

801029CC.hkh



2. Page 5, line 19 through line 20.

Following: "3-10-115" on line 19

Strike: "IF ALL PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE
JUSTICE'S COURT OF RECORD"

- END -

HOUSE BILL NO. 367

INTRODUCED BY PARKER

ABILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; ~~PROVIDING THAT NONATTORNEYS MAY NOT REPRESENT OTHERS IN JUSTICES' COURTS OF RECORD; PROVIDING THAT AN APPEAL FROM A JUSTICE'S COURT OF RECORD TO THE DISTRICT COURT IS ON THE RECORD AND NOT DE NOVO ONLY IF ALL THE PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD~~; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, ~~25-31-601~~, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, and the municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court ~~established as a~~ court of record, provided for in 3-10-101;
- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

1 **Section 3.** Section 3-6-204, MCA, is amended to read:

2 **"3-6-204. Disqualification -- judge pro tempore.** When a judge of a municipal court has been
3 disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's court established
4 ~~as a court of record~~ provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a
5 justice's court established ~~as a court of record~~, a retired municipal court judge, or an attorney of the county in
6 which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and
7 authority as the municipal court judge."

8
9 **Section 4.** Section 3-10-101, MCA, is amended to read:

10 **"3-10-101. Number and location of justices' courts -- authorization to combine with city court --**
11 **justice's court established as court of record.** (1) There must be at least one justice's court in each county
12 of the state, which must be located at the county seat. The board of county commissioners shall designate the
13 number of justices in each justice's court.

14 (2) The board of county commissioners of each county of the state may establish:

15 (a) one additional justice's court located anywhere in the county; and

16 (b) one additional justice's court located in each city having a population of over 5,000, as provided in
17 subsection (3).

18 (3) A city having a population of over 5,000 may, by resolution, request the board of county
19 commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the
20 board of county commissioners approves the request by resolution.

21 (4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge
22 upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the
23 board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter
24 into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202,
25 and for proportionate reimbursement for the use of facilities.

26 (5) A county may establish the justice's court as a court of record. If the justice's court is established
27 as a court of record, it must be known as a "justice's court established as a court of record" and,
28 in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 through 3-10-117 and
29 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and
30 all papers filed in a proceeding must be included in the record. A justice's court established as a court of record

may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

NEW SECTION. Section 5. Powers and duties of justice's court of record. (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's court established as court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's court established as a court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's court established as a court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's court established as a court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's court established as court of record -- judge pro tempore. When a justice of the peace for a justice's court established as a court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's court established as a court of record, a municipal court judge, a retired justice of the peace for a justice's court established as a court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice

1 of the peace for the justice's court established as a court of record."

2

3 **Section 8.** Section 3-10-203, MCA, is amended to read:

4 **"3-10-203. Orientation course -- annual training.** (1) Under the supervision of the supreme court, a
5 course of study must be presented as soon as is practical following each general election. Actual and necessary
6 travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books
7 and other materials must be paid to the elected or appointed justice of the peace for attending the course by the
8 county in which the justice of the peace holds or will hold court and must be charged against that county.

9 (2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised
10 by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be
11 held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses,
12 as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other
13 materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county
14 in which the justice of the peace holds or will hold court and must be charged against that county.

15 (3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training
16 sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and
17 creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance
18 because of illness, a death in the family, or any other good cause.

19 ~~(4) A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101,~~
20 ~~must meet the requirements provided for in 3-10-117."~~

21

22 **Section 9.** Section 3-10-207, MCA, is amended to read:

23 **"3-10-207. Salaries.** (1) Subject to subsections (2) through (4), the board of county commissioners shall
24 set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as
25 provided in 7-4-2504.

26 (2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court
27 in that county.

28 (3) If the justice's court is not open for business full time, the justice's salary must be commensurate
29 to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the
30 justice's term of office.

(4) The salary of the justice of the peace for a justice's court established as a court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

~~Section 10. Section 25-31-601, MCA, is amended to read:~~

~~"25-31-601. Who may act as attorney. Parties in justice's court may appear and act in person or by attorney; and Except in a justice's court of record, any person, except the constable by whom the summons or jury process was served, may act as attorney."~~

Section 10. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's court established as a court of record pursuant to 3-10-101 is on the record as provided in 3-10-115 ~~IF ALL PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD."~~

Section 11. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

- (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;
(d) notification of the existence of a plea agreement, 46-12-211;
(e) disclosure and discovery motions, Title 46, chapter 15, part 3;
(f) notice of reliance on certain defenses, 46-15-323;
(g) notice of seeking persistent felony offender status, 46-13-108;
(h) notice of other crimes, wrongs, or acts, 46-13-109;
(i) motion to suppress, 46-13-301 and 46-13-302;
(j) motion to dismiss, 46-13-401 and 46-13-402;
(k) motion for change of place of trial, 46-13-203 through 46-13-205;
(l) reasonableness of bail, Title 46, chapter 9; and
(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's court established as a court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the

1 court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record
2 if the notice of appeal is not timely filed. The defendant may petition the district court to order the record
3 transmitted upon a showing of good cause for failure to timely file the notice of appeal.

4 (4) A defendant may appeal a justice's court, other than a justice's court established as a court of
5 record, or city court revocation of a suspended sentence to the district court. The district court judge shall
6 determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation
7 procedure.

8 (5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet
9 a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative
10 or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon
11 dismissal, the appealed judgment is reinstated and becomes the operative judgment."
12

13 NEW SECTION. Section 13. Repealer. Section 3-10-117, MCA, is repealed.
14

15 NEW SECTION. Section 14. Codification instruction. [Section 5] is intended to be codified as an
16 integral part of Title 3, chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].
17

18 NEW SECTION. Section 15. Effective date. [This act] is effective July 1, 2005.
19

- END -

SENATE JOURNAL
EIGHTIETH LEGISLATIVE DAY - APRIL 14, 2005

Gallik, Chairman
Hamilton
Maedje
Peterson

Harrington, Chairman
Gebhardt
Toole

CONFERENCE COMMITTEE
on Senate Amendments to **House Bill 367**
Report No. 1, April 14, 2005

Mr. Speaker and Mr. President:

We, your Conference Committee met and considered Senate amendments to **House Bill 367** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

And, recommend that **House Bill 367** (reference copy -- salmon) be amended as follows:

1. Title, line 7 through line 10.

Following: "~~RECORD~~;" on line 7

Strike: "PROVIDING THAT AN APPEAL FROM A JUSTICE'S COURT OF RECORD TO THE DISTRICT COURT IS ON THE RECORD AND NOT DE NOVO ONLY IF ALL THE PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD;"

2. Page 5, line 19 through line 20.

Following: "3-10-115" on line 19

Strike: "IF ALL PARTIES WERE REPRESENTED BY AN ATTORNEY IN THE JUSTICE'S COURT OF RECORD"

For the House:

Driscoll, Chairman
Lange
Parker
Rice

For the Senate:

Mangan, Chairman
Cromley
Perry

FREE CONFERENCE COMMITTEE
on **House Bill 493**
Report No. 1, April 13, 2005

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 493** (reference copy -- salmon) and recommend this Free Conference Committee report be adopted.

And, recommend that **House Bill 493** (reference copy -- salmon) be amended as follows:

1. Page 1, lines 17 through 18.

Following: "projects" on line 17

Strike: "INCLUDING" through "AUTHORITY," on line 17

2. Page 1, line 23.

2005 Montana Legislature

About Bill -- Links



HOUSE BILL NO. 367
INTRODUCED BY PARKER

AN ACT GENERALLY REVISING LAWS GOVERNING COURTS; REVISING REFERENCES TO JUSTICES' COURTS ESTABLISHED AS COURTS OF RECORD; ELIMINATING SPECIAL TRAINING REQUIREMENTS FOR JUSTICES OF JUSTICES' COURTS OF RECORD; CLARIFYING THE AUTHORITY OF A JUDGE OR JUSTICE TO ORDER A DEFENDANT TO APPEAR BEFORE THE COURT IN AN OMNIBUS HEARING; REQUIRING TIMELY FILING OF A NOTICE OF APPEAL FROM A COURT OF LIMITED JURISDICTION; AMENDING SECTIONS 3-1-102, 3-5-114, 3-6-204, 3-10-101, 3-10-115, 3-10-116, 3-10-203, 3-10-207, 25-33-301, 46-13-110, AND 46-17-311, MCA; REPEALING SECTION 3-10-117, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-102, MCA, is amended to read:

"3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, ~~and~~ the municipal courts, and the justices' courts of record are courts of record."

Section 2. Section 3-5-114, MCA, is amended to read:

"3-5-114. Qualifications. Any of the following individuals may act as a judge pro tempore:

- (1) a member of the bar of the state who meets the qualifications for judge of the district court as provided in 3-5-202;
- (2) a retired judge of the district court;
- (3) a justice of the peace for a justice's court ~~established as a~~ court of record, provided for in 3-10-101;

- (4) a municipal court judge; or
- (5) a retired justice of the supreme court."

Section 3. Section 3-6-204, MCA, is amended to read:

"3-6-204. Disqualification -- judge pro tempore. When a judge of a municipal court has been disqualified or is sick or unable to act, the judge shall call in a justice of the peace for a justice's ~~court established as a~~ court of record provided for in 3-10-101, another municipal court judge, a retired justice of the peace for a justice's ~~court established as a~~ court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the municipal court judge."

Section 4. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts -- authorization to combine with city court -- justice's ~~court established as~~ court of record. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. The board of county commissioners shall designate the number of justices in each justice's court.

(2) The board of county commissioners of each county of the state may establish:

- (a) one additional justice's court located anywhere in the county; and
- (b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court must be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court established pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing the action and upon approval of the ordinance by resolution of the board of county commissioners. If the ordinance and resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities.

(5) A county may establish the justice's court as a court of record. If the justice's court is established as a court of record, it must be known as a "justice's ~~justice's court established as a~~ court of ~~record~~ record" and, in addition to the provisions of this chapter, is also subject to the provisions of 3-10-115 ~~through 3-10-117~~ and 3-10-116. The court's proceedings must be recorded by electronic recording or stenographic transcription and all

papers filed in a proceeding must be included in the record. A justice's ~~court established as a~~ court of record may be established by a resolution of the county commissioners or pursuant to 7-5-131 through 7-5-137."

Section 5. Powers and duties of justice's court of record. (1) Except as otherwise provided by Title 25, chapter 30, and this chapter, the justice of the peace in a justice's court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases. The justice of the peace may make and alter rules for the conduct of its business and prescribe forms of process conformable to law.

(2) The justice's court of record shall establish rules for appeal to district court. The rules are subject to the supreme court's rulemaking and supervisory authority.

Section 6. Section 3-10-115, MCA, is amended to read:

"3-10-115. Appeal to district court from justice's ~~court established as~~ court of record -- record on appeal. (1) A party may appeal to district court a judgment or order from a justice's ~~court established as a~~ court of record. The appeal is confined to review of the record and questions of law, subject to the supreme court's rulemaking and supervisory authority.

(2) The record on appeal to district court consists of an electronic recording or stenographic transcription of a case tried, together with all papers filed in the action.

(3) The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the court from which the appeal was taken.

(4) Unless the supreme court establishes rules for appeal from a justice's ~~court established as a~~ court of record to the district court, the Montana Uniform Municipal Court Rules of Appeal to District Court, codified in Title 25, chapter 30, apply to appeals to district court from the justice's ~~court established as a~~ court of record."

Section 7. Section 3-10-116, MCA, is amended to read:

"3-10-116. Disqualification of justice of peace for justice's ~~court established as~~ court of record -- judge pro tempore. When a justice of the peace for a justice's ~~court established as a~~ court of record has been disqualified or is sick or unable to act, the justice shall call in another justice of the peace for a justice's ~~court established as a~~ court of record, a municipal court judge, a retired justice of the peace for a justice's ~~court established as a~~ court of record, a retired municipal court judge, or an attorney of the county in which the court is located to act as a judge pro tempore. The judge pro tempore has the same power and authority as the justice of the peace for the justice's ~~court established as a~~ court of record."

Section 8. Section 3-10-203, MCA, is amended to read:

"3-10-203. Orientation course -- annual training. (1) Under the supervision of the supreme court, a course of study must be presented as soon as is practical following each general election. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the course by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(2) ~~Subject to subsection (4), there~~ There must be two mandatory annual training sessions supervised by the supreme court for all elected and appointed justices of the peace. One of the training sessions may be held in conjunction with the Montana magistrates' association convention. Actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, and the costs of registration and books and other materials must be paid to the elected or appointed justice of the peace for attending the sessions by the county in which the justice of the peace holds or will hold court and must be charged against that county.

(3) ~~Except as provided in subsection (4), each~~ Each justice of the peace shall attend the training sessions provided for in subsection (2). Failure to attend disqualifies the justice of the peace from office and creates a vacancy in the office. However, the supreme court may excuse a justice of the peace from attendance because of illness, a death in the family, or any other good cause.

(4) ~~A justice of the peace for a justice's court established as a court of record, provided for in 3-10-101, must meet the requirements provided for in 3-10-117."~~

Section 9. Section 3-10-207, MCA, is amended to read:

"3-10-207. Salaries. (1) Subject to subsections (2) through (4), the board of county commissioners shall set salaries for justices of the peace by resolution and in conjunction with setting salaries for other officers as provided in 7-4-2504.

(2) The salary of the justice of the peace may not be less than the salary for the district clerk of the court in that county.

(3) If the justice's court is not open for business full time, the justice's salary must be commensurate to the workload and office hours of the court. The salary of a justice of the peace may not be reduced during the justice's term of office.

(4) The salary of the justice of the peace for a justice's court ~~established as a~~ court of record may not exceed 90% of the salary of a district court judge determined as provided in 3-5-211."

Section 10. Section 25-33-301, MCA, is amended to read:

"25-33-301. Trial de novo -- pleadings -- conduct of trial. (1) Except as provided in subsection (3), all appeals from justices' or city courts must be tried anew in the district court on the papers filed in the justice's or city court unless the court, for good cause shown and on terms that are just, allows other or amended pleadings to be filed in the action. The court may order new or amended pleadings to be filed. Each party has the benefit of all legal objections made in the justice's or city court.

(2) When the action is tried anew on appeal, the trial must be conducted in all respects as other trials in the district court. The provisions of this code as to trials in the district courts are applicable to trials on appeal in the district court.

(3) The appeal from a justice's ~~court established as a~~ court of record pursuant to 3-10-101 is on the record as provided in 3-10-115."

Section 11. Section 46-13-110, MCA, is amended to read:

"46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required, unless ordered by the court. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

- (a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210, and 46-13-211;
- (b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;
- (c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;
- (d) notification of the existence of a plea agreement, 46-12-211;
- (e) disclosure and discovery motions, Title 46, chapter 15, part 3;
- (f) notice of reliance on certain defenses, 46-15-323;
- (g) notice of seeking persistent felony offender status, 46-13-108;
- (h) notice of other crimes, wrongs, or acts, 46-13-109;
- (i) motion to suppress, 46-13-301 and 46-13-302;
- (j) motion to dismiss, 46-13-401 and 46-13-402;
- (k) motion for change of place of trial, 46-13-203 through 46-13-205;
- (l) reasonableness of bail, Title 46, chapter 9; and
- (m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 12. Section 46-17-311, MCA, is amended to read:

"46-17-311. Appeal from justices', municipal, and city courts. (1) Except as provided in 46-17-203(2)(b) or subsection (4) of this section and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110, and an appeal from a justice's ~~court established as a~~ court of record is governed by 3-10-115.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial or the denial of the motion to withdraw a plea as provided in 46-17-203(2)(b). In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of timely filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court. The court of limited jurisdiction has no duty to transmit the record if the notice of appeal is not timely filed. The defendant may petition the district court to order the record transmitted upon a showing of good cause for failure to timely file the notice of appeal.

(4) A defendant may appeal a justice's court, other than a justice's ~~court established as a~~ court of record, or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure.

(5) If, on appeal to the district court, the defendant fails to appear for a scheduled court date or meet a court deadline, the court may, except for good cause shown, dismiss the appeal on the court's own initiative or on motion by the prosecution and the right to a jury trial is considered waived by the defendant. Upon dismissal, the appealed judgment is reinstated and becomes the operative judgment."

Section 13. Repealer. Section 3-10-117, MCA, is repealed.

Section 14. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 3,

chapter 10, and the provisions of Title 3, chapter 10, apply to [section 5].

Section 15. Effective date. [This act] is effective July 1, 2005.

- END -

Latest Version of HB 367 (*HB0367.ENR*)

Processed for the Web on April 20, 2005 (5:49pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

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